

JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

Volume 25, Number 1

March 2014

ARTICLES

No-action clause in bond trust – *Benjamin Liu*

The “no-action” clause, which provides that bondholders may not proceed against an issuer unless certain conditions are met, is included in almost all bond trust instruments. This article compares two approaches in interpreting this clause, the expansive approach and the restrictive approach, and argues that the former should be preferred. The article also analyses whether pre-default claims are covered by the no-action clause, and in what situations the claim of a bondholder is an individual claim (which is not barred by the no-action clause) as opposed to a class claim (which is barred). The no-action clause has been subjected to strong criticism in recent years. Possible solutions could include imposing a duty of information disclosure on the trustee and active participation by the bondholders in the enforcement process.

3

Over-the-counter derivatives regulation in China: How far across the river? – *Mark Hsiao*

In 2011, China revised its prudential regulation on the derivatives activities of financial institutions as a result of the global financial crisis. This article considers how prudential regulation, supervision of conduct and requirements that limit risk-taking are used to achieve policy objectives in the context of regulating derivatives in China. This is particularly pertinent in the case of China, where financial institutions were formerly state-owned enterprises. These objectives are closely related to defining the legitimate purpose of contracts which are used to hedge default risk of credit assets owned by financial institutions. The article also considers the legal aspects of the executory contract arising from the legal transplant of the International Swaps and Derivatives Association Master Agreement 2002 into China in the form of National Association of Financial Market Institutional Investors documents, and the way in which the Contract Law of the People’s Republic of China 1999 (China) and the Enterprise Bankruptcy Law of the People’s Republic of China 2006 (China) interact to offer a solution to the issue. Finally, the article offers an explanation of existing Chinese central counterparty and finality orders in clearing and settlement systems for possible alignment with international recommendations on over-the-counter derivatives regulation at Pittsburgh in 2009.

14

Road map for financial inclusion in India – *Aditi Patanjali*

This article examines the role that central banks play in promoting financial inclusion in developing countries through credit allocation, with particular focus on India. It attempts to analyse the impact that access to credit has on development. It looks into whether central banks of developing countries have different responsibilities from their counterparts in developed countries. It considers in particular what the Reserve Bank of India (RBI) and the Indian government have done to address the concerns of credit allocation. It also suggests possible reforms in the financial sector that can be undertaken by India for more comprehensive financial inclusion.

26

BANKING LAW AND BANKING PRACTICE	
Fees and penalties	43
Code of Banking Practice 2013	47
INSOLVENCY LAW AND MANAGEMENT	
Disclaimed leases: Is there any hope for tenants?	48
RECENT PUBLICATIONS	52
TOKYO	
Amendments to laws relating to financial products	56
NEW ZEALAND	
Steigrad v Bridgecorp: The Supreme Court decision	59